

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Patrick Williams,
Appellant,

v.

City of Cedar Rapids Board of Review,
Appellee.

ORDER

Docket No. 14-101-0371
Parcel No. 14091-52002-00000

On December 23, 2014, the above-captioned appeal came on for a phone hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Patrick Williams was self-represented. Assistant City Attorney Mohammed Sheronick represented the Board of Review. The Appeal Board having reviewed the entire record, and being fully advised, finds:

Findings of Fact

Patrick Williams is the owner of a commercially classified property located at 3725 Center Point Road NE, Cedar Rapids, Iowa. The property was assessed at \$115,728 as of January 1, 2014, representing \$36,814 in land value and \$78,914 in improvement value. This was a reduction from the prior year's assessment, making all grounds for appeal under Iowa Code section 441.37(1)(a)(1) available.

Williams protested to the Board of Review on the ground that the property is not assessable, is exempt from taxation, or is misclassified under Iowa Code section 441.37(1)(a)(1)(c). The Board of Review denied the protest.

Williams then appealed to this Board reasserting his claim. He states that this property is being used as a residence for individuals with disabilities and rented at a below market rate.

The record demonstrates that Williams timely filed an exemption application with the Cedar Rapids Assessor's office in November 2013. Although Williams did not identify the specific exemption he sought, he states that the property is being used as "rental housing for individuals with disabilities" and that it is not rented/leased or used for commercial purposes or pecuniary profit.

The property was then inspected in January 2014 by Tom Lee of the Assessor's office, who initially recommended granting the exemption. In a March 24th letter from City Assessor Scott Labus to Williams, Labus identified that the exemption application was incomplete and requested Williams supply the charter and by-laws of Williams' charitable and benevolent organization and an explanation of how income generated from the real estate is used for charitable and benevolent purposes.

On March 31st, Labus notified Williams that the exemption had been denied after examination of the application. The notification advised Williams that an exemption must be accompanied by a *Statement of Objects and Uses* under Iowa Code section 427.1(14). Williams was advised to file a protest with the Board of Review if he wished to contest the denial.

At his hearing before PAAB, Williams testified that the property was formerly classified residential but the classification had been changed. The property's exterior appearance resembles a traditional residential dwelling. Williams testified it was used as a residence, but was converted to a real estate office and then was used as an office for an organization called "To The Rescue." The property record indicates it has been classified commercial since at least 2013.

Williams stated the property offers below-market rate housing for individuals with disabilities and approved for disability services through the Medicaid waiver program. He testified the property is modeled off of and used in a similar manner as other exempt properties in the jurisdiction – Linnhaven and Discovery Living. He believes that any property that provides below market rate housing to disabled persons should be exempt.

Williams also testified that PRK Williams, Inc. provides disability-related services at the property to its residents. The record contains a certificate acknowledging that PRK Williams, Inc. is a corporation formed and registered under the laws of Colorado and the by-laws of PRK Williams, Inc., which appear to have been submitted to the Board of Review on or about May 14, 2014. Neither of these documents indicate the purpose or objectives of the company and whether it operates for a charitable or benevolent purpose. Williams also submitted literature entitled “To The Rescue Supported Community Living Housing” that demonstrates the property’s use as a supervised independent apartment living setting for individuals with intellectual disabilities.

Williams admitted that the property was not operated as a non-profit entity or owned by a non-profit organization. He testified and the property record card reflects that the property is owned by Williams’ personally. On cross-examination, Williams also admitted that he has not provided evidence indicating rents charged at the facility are below market, but notes that they have never been requested. He stated that he was not exempt from federal income tax under Internal Revenue Code section 501(c)(3).

Labus testified on behalf of the Board of Review. He stated that his office requested specific documents from Williams in March 2014 to consider along with Williams’ exemption application and received no response. As a result, the previously approved exemption was denied.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3).

Exemption Claim

A party claiming an exemption has the burden of proof. *Care Initiatives v. Bd. of Review of Union Cnty.*, 500 N.W.2d 14, 17 (Iowa 1993). We strictly construe exemption statutes and any doubt about an exemption is resolved in favor of taxation. *Id.* at 16-17.

Williams asserts the property should be exempt because it provides below market rate housing to persons with disabilities. Although he did not specifically identify which exemptions he was seeking, it appears to this Board the most relevant exemptions are in Iowa Code section 427.1 subsections (8) and (21).

Subsection 21 gives an exemption for properties “owned and operated or controlled by a nonprofit organization, as recognized by the internal revenue service, providing low-rent housing for persons who are elderly and persons with physical and mental disabilities.” Williams admits that this property is not owned by a nonprofit organization. On that basis, we find that Williams does not qualify for an exemption under subsection 21.

Subsection 8 provides an exemption for properties used for their appropriate objects by charitable and benevolent organizations and not used with a view to pecuniary profit. Under Iowa law, an entity must prove three factors by a preponderance of the evidence to establish the tax exempt status of its property under subsection 8: 1) the entity was a charitable institution at the time of the claimed exemption, 2) the entity did not operate the facility with a view to pecuniary profit, and 3) the actual use of the facility was solely for the appropriate objects of the charitable institution. *Carroll Area Child Care Ctr., Inc. v. Carroll Cnty. Bd. of Review*, 613 N.W.2d 252, 254-55 (Iowa 2000) (citing *P’ship for Affordable Housing Ltd. P’ship Gamma v. Bd. of Review*, 550 N.W.2d 161, 164 (Iowa

1996)). The term “charitable” is given a broad definition. *Care Initiatives*, 500 N.W.2d at 17.

Pecuniary profit refers to a “monetary gain inur[ing] to [the] benefit of private individuals.” *Id.*

The Board of Review argues that the property is not owned by a non-profit or charitable organization and thereby does not qualify for the exemption. In *Iowa Methodist Hospital v. Board of Review of City of Des Moines*, 525 N.W.2d 390 (Iowa 1977), the Iowa Supreme Court noted that it was the “character of use, rather than identity of owner, [that] controls in determining whether a charitable organization is exempt from taxation.” As a result, the fact that Williams owns the property in his individual capacity does not automatically preclude an exemption under subsection 8.

Iowa courts examining exemptions for charitable and benevolent purposes have long said that the use of the property, not the stated purpose of the entity applying for the exemption, is the most important consideration. *Theta Xi Bldg. Ass’n of Iowa City v. Bd. of Review of Iowa City*, 251 N.W. 76 (Iowa 1933); *P’ship for Affordable Housing*, 550 N.W.2d 164 (“[P]aramount consideration is the actual use of the property.”). Exemptions for charitable use facilities does not solely depend on a donor’s lofty or generous motives. *Care Initiatives*, 500 N.W.2d at 17.

In seeking an exemption, Williams attempts to divorce the physical premise of the property from the services provided to its residents. This is both contrary to logic and the law. First, it seems apparent that the residents would not be able to reside at the property in the absence of the provided services. It therefore seems illogical to separate the services provided at the property from the property itself.

Second, the case law states that simply providing housing does not qualify as “charity” under the Section 8 exemption. In *Carroll Area Child Care Center*, the Court determined that in order to qualify for a charitable exemption, an elderly care facility must “provide some level of care, as opposed to mere housing.” 613 N.W.2d at 256. In addition, “the care must be made available on a gratuitous or partly gratuitous basis.” *Id.* The Court concluded that gratuitous or partly gratuitous care

can be provided in two different ways. *Id.* at 257. The care can be subsidized for those who are unable to pay. *Id.* Alternatively, charitable contributions can be used to “cover the costs of establishing the facility and some portion of the ongoing operating expenses, thereby subsidizing the cost of the facility for all persons who use it, regardless of their ability to pay.” *Id.*

In the present case, the facts weigh heavily in favor of denial of the exemption. Williams testified that PRK Williams, Inc. provides services and care to the properties’ residents. However, there is no evidence to show that PRK Williams provides these services on either a gratuitous or partly gratuitous basis. The “To the Rescue” literature and the certificate and by-laws provided by Williams do not indicate that PRK Williams provides free or reduced fee care services. Williams did not supply any evidence to suggest that PRK Williams has any charitable or benevolent purpose.

In addition, there is no evidence to suggest that charges to residents are below the actual cost of care or that the costs are subsidized in any manner. There is also no evidence to conclude the cost of establishing the facility or the ongoing operating expenses are covered, in whole or in part, by any charitable contributions. Further, although Williams testified that he charges below market rent, he did not submit any evidence to substantiate this assertion. There was no testimony or evidence offered concerning the admissions criteria of the facility and whether residents were admitted without regard of their ability to pay. For these reasons, we find that Williams has not met his burden of showing that the actual use of the property was solely for the appropriate objects of a charitable institution and affirm the denial of the exemption.

Misclassification Claim

Before this Board, Williams also appeared to assert the property is incorrectly classified as commercial and its proper classification is residential because it is used as a residence for disabled individuals.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). There can be only one classification per property. r. 701-71.1(1).

The rules state:

Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation. Buildings for human habitation that are used as commercial ventures, including . . . structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters . . . land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. r. 701-71.1(4)

Conversely, commercial real estate

Commercial realty shall [] include . . . structures containing three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. However, regardless of the number of separate living quarters or any commercial use of the property . . . land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate. r. 701-71.1(5).

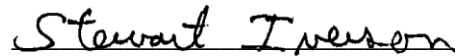
The evidence established that the property is not owned by a non-profit but is used for human habitation and the provision of other care services. The testimony and evidence before this Board did not indicate the number of units included in the facility or the design and layout of the property's interior. The record indicates Tom Lee of the Assessor's office inspected the property in January 2014. Because of the minimal evidence provided to support this claim and the fact that the Assessor's office recently toured the facility, we defer to the Assessor's judgment and affirm the property's commercial classification. However, we recommend the Assessor's office review the classification of this property for the 2015 assessment.

THE APPEAL BOARD ORDERS the City of Cedar Rapids Board of Review's decision denying Williams' protest is affirmed.

Dated this 28th day of January, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

Patrick Williams
3909 Forest View Court NE
Cedar Rapids, IA 52411

Mohammed Sheronick
Assistant City Attorney
101 1st Street SE
Cedar Rapids, IA 52401